

**ECONOMIC  
AND  
SOCIAL COUNCIL**

**CONSEIL  
ECONOMIQUE  
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MASTER FILE

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Lake Success, New York

Thursday, 6 May 1948 at 10:30 a.m.

Present:

CHAIRMAN: Mrs. Franklin D. ROOSEVELT (United States of America)

RAPPORTEUR  
and

VICE-CHAIRMAN: Mr. Charles MALIK (Lebanon)  
Mr. E. J. R. HEYWOOD (Australia)  
Mr. H. SANTA CRUZ (Chile)  
Mr. T. Y. WU (China)  
Mr. P. ORDONNEAU (France)  
Mr. A. P. PAVLOV (Union of Soviet  
Socialist Republics)  
Mr. E. WILSON (United Kingdom)

REPRESENTATIVES OF SPECIALIZED AGENCIES:

Mr. JENKS (International Labour  
Organisation)  
Mr. O. STONE (International Refugee  
Organization)  
Mr. P. LEBAR (United Nations Educational,  
Scientific and Cultural  
Organization)

CONSULTANTS FROM NON-GOVERNMENTAL ORGANIZATIONS:

Miss Toni SENDER (American Federation  
of Labor)

SECRETARIAT: Dr. J. P. HUMPHREY  
Dr. E. SCHWELB  
Mr. J. MALE

1. DISCUSSION OF ARTICLE 8 OF THE DRAFT INTERNATIONAL COVENANT.

Mr. JENKS (International Labour Organization) said that, following the request of the Economic and Social Council at its sixth session (Cf. E/749) the International Labour Organization had considered paragraph 3 (c) of Article 8 of the Draft International Covenant on Human Rights, and had examined the International Labour Organization Convention on Forced Labour of 1930, in the light of the discussions in the Council. A note containing a detailed survey of the position as the International Labour Organization saw it would be circulated.

It had proved difficult to examine paragraph 3 (c) of Article 8 except in relation to the Articles as a whole, and in this connection he wished to make a few comments on paragraph 2 of Article 8, which concerned prison labour. He drew attention to a similar Article in the International Labour Organization Convention, Article 2 (c), pointing out that by the latter, forced or compulsory labour following a prison sentence must be exacted under the supervision of the public authority and could not be hired under private contract. As the Covenant Article dealt with general principles, he thought it might be well to amend it on the basis of the relevant Article in the International Labour Organization Convention.

Regarding paragraph 3 (c) of Article 8 of the Covenant, concerning minor communal services, the general principles were very similar to those contained in the relevant clause in the International Labour Organization Convention, Article 2 (e), but the Covenant Article was more rigid. It was important that the obligation should be applicable in under-developed communities. In certain cases forced labour was governed by native tradition and custom, there was nothing to imply acceptance by the community, and the people had no directly elected representatives. Minor communal services should be part of accepted local customs. Further, the phrase "minor communal services considered as normal civic obligations" was not precise enough. After consultation with governments, in drawing up the International Labour Organization Convention, it had been thought important to draw a distinction between services of a purely local character and the custom in some territories of using forced labour in the construction of major roads and irrigation projects. Such works could not be considered within the scope of a clause designed to cover minor communal services. The more precise wording of the International Labour Organization Convention clause might be preferable.

He recognized the difference in drawing up a general Covenant on Human Rights and a detailed Convention on Forced Labour, but in these two clauses on prison labour and minor communal services, both documents dealt with a statement of principles. The language of the International Labour Organization Convention had been accepted by twenty-two States, and the Convention had been ratified and in force for seventeen years.

Miss SENDER (American Federation of Labour) said that the International Labour Organization Convention clause concerning prison labour was an improvement on the Covenant Article. She asked whether the International Labour Organization contemplated any revision of the Convention on Forced Labour of 1930, and whether the provision concerning minor communal services was as important now as it had been seventeen years ago.

Mr. JENKS (International Labour Organization) said that no decision had been taken to revise the Convention, and it was unlikely that such a decision would be taken in the near future. The provision regarding minor communal services was as important as it had been seventeen years ago in areas where the Convention had the greatest degree of application.

The CHAIRMAN read the comments on Article 8 received by the Governments of Brazil and the Netherlands (E/CN.4/85, page 63), and India (E/CN.4/82/A page 2), not represented on the Drafting Committee.

Mr. SANTA CRUZ (Chile) said that the Committee should wait for the International Labour Organization text to be circulated before taking a final decision on Article 8. The comment from the Brazilian Government concerning the substitution in paragraph 2 of the word "offence" for "crime" applied to the English text only. If "crime" did not cover cases of vagrancy, then "offence" should be used.

Mr. WILSON (United Kingdom) drew attention to the comment of the United Kingdom Government (E/CN.4/85, page 64) which would cover the point raised by the Brazilian Government. The amendment which the United Kingdom Government had proposed to paragraph 2 was a drafting change which did not alter the substance of the paragraph.

The CHAIRMAN said that the United States delegation, while agreeing with the exceptions listed under paragraph 3 of Article 8 thought that the list was not inclusive and should be omitted. Paragraph 1, and the Brazilian suggestion and the United Kingdom wording of paragraph 2 were acceptable but a general Article combining paragraphs 1 and 2 and deleting paragraph 3 would be preferable. The text of such an Article which the United States delegate proposed was contained in document E/CN.4/AC.1/19, page 8. A decision on this could be postponed until the final wording of Article 4 of the Draft Covenant had been agreed upon.

Mr. ORDONNEAU (France) proposed as a drafting change that paragraph 2 should be deleted and included under the list of exceptions as paragraph 3. He preferred the text of paragraph 2 as drafted by the Commission on Human Rights to the United Kingdom suggestion, which he thought went too far and would make it possible for a man sentenced to imprisonment only to be compelled to do forced labour.

Mr. MALIK (Lebanon) supported the representative of France on that point. Under the Commission draft, forced labour could only be exacted when it was explicitly provided for in the court sentence. The United Kingdom suggestion

/would leave

would leave the matter to the discretion of the prison authorities.

He thought that paragraphs 2 and 3 should be separate. Paragraph 2 gave the general rule, stating that forced or compulsory labour should not be allowed; paragraph 3 listed the exceptions, stating that certain services should not be considered as forced labour.

Mr. SANTA CRUZ (Chile) said that he preferred the Commission draft of paragraph 2 if it covered the case of a sentence of imprisonment with forced labour which was a special type of penalty imposed in Chile for graver crimes. Under the United Kingdom amendment, penal institutions could order prisoners to do forced labour when it was not part of the sentence and not provided by the law.

Mr. ORDONNEAU (France) said that a distinction must be made between sentence of imprisonment with forced labour, and sentence of imprisonment which, by customary practice, carried with it the obligation to do a certain amount of necessary work. The text as drafted by the Commission covered the former, but not the latter case.

Mr. WILSON (United Kingdom) said that it was better to keep paragraphs 2 and 3 separate. There was no substantial difference between paragraph 2 as drafted by the Commission on Human Rights and the United Kingdom suggestion. The difficulty was that, in the United Kingdom, sentence of imprisonment carried with it the obligation to do such work as the prison authorities might impose, as for example, cleaning and kitchen work. If the present wording were adopted, it would be necessary to change the United Kingdom custom and in each sentence of imprisonment add the words "forced labour while in prison". The United Kingdom text, on the other hand, would not change customary practice anywhere.

Mr. ORDONNEAU (France) said that it was true that it would not be necessary for states to change their practice, but clear, precise wording as needed. Two types of work could be done by prisoners, work connected with the maintenance of the prison, such as kitchen work and cleaning, and work done in prison workshops. In France, labour in prison workshops was voluntary; the Committee should not adopt any text which would leave open the possibility that prisoners might be compelled <sup>to</sup> work in the workshops. The draft as it stood would cover the case of normal chores which were generally considered part of a prison sentence.

/Mr. WILSON (United Kingdom)

Mr. WILSON (United Kingdom) said that the United Kingdom wording would not change any existing practice. Prison maintenance work was really forced labour. He did not think there was a fundamental point of substance in the United Kingdom wording but rather that it referred to procedure. The International Labour Organization suggestion for this clause would be acceptable to his delegation.

The CHAIRMAN said that forced labour was not work done in the prison workshops which many prisons had tried to make available to the prisoners. The problem there was to avoid competition between the prison workshops and labour outside. They were intended for the rehabilitation of the prisoners and, in most cases, worked on a voluntary basis. They could not be considered as forced labour. She thought that the United Kingdom text was preferable, and was not an amendment of substance.

Mr. ORDONNEAU (France) said that he did not object to the substance of the United Kingdom amendment but thought it went too far and might even be dangerous as drafted. He was opposed to a broad formulation which made it possible for forced labour to be exacted of those serving a prison sentence.

The CHAIRMAN suggested that the representatives of France and the United Kingdom should redraft this clause, taking into account the International Labour Organization proposal.

Mr. MALIK (Lebanon), said that there were two kinds of prison sentences, imprisonment with forced labour, and imprisonment alone. Under the United Kingdom amendment, the latter could be abused by Governments. The fear of abuse had led to the formula as it was before the Committee.

Mr. SANTA CRUZ (Chile) supported the representative of the Lebanon and accepted the Chairman's suggestion.

/The Committee

The Committee agreed without objection that the representatives of France and the United Kingdom should redraft paragraph 2 of Article 8 of the Covenant, bearing in mind the discussion in the Committee and the suggestions made by the representative of the International Labour Organization.

Article 8, paragraph 3 (a)

Mr. MALIK (Lebanon) proposed the addition to sub-paragraph (a) of the phrase "provided that the civilian service of conscientious objectors be compensated with adequate maintenance and pay". He explained that this amendment had been rejected at the second Session of the Commission by six votes to four with seven abstentions, but many representatives had admitted after the vote that they had not understood what was intended by adequate maintenance. It meant food, clothing and shelter and nothing more. The degree of maintenance and pay could be less than that received by the lowest paid soldier.

Mr. WILSON (United Kingdom) and Mr. HEYWOOD (Australia) supported this proposal.

The CHAIRMAN drew attention to the suggestion of the Indian government that this clause should be deleted and of the Brazilian government that it should be extended to include women (E/CN.4/85. page 63).

Mr. OKUNNEAU (France) said that it was not clear what was meant by "services". If these were military, then they would include women.

The CHAIRMAN said that the United States delegation had no objection to the Lebanese proposal, but wondered whether it was appropriate to include a clause on conscientious objectors. The Covenant should be as widely acceptable as possible. Some governments did not recognize conscientious objectors. She suggested that the clause might be included, and a note added that the matter should be raised in the Commission on Human Rights for very careful consideration. The point about adequate pay for conscientious objectors should be related to a soldier's and not to a civilian's pay.

Mr. MALIK (Lebanon) said that the clause applied only to countries which recognized conscientious objectors. The point was that such countries should do so honestly and sincerely.

Mr. ORDONNEAU (France) proposed that the word "compensation" (French "prestation") should be used rather than "pay", as soldiers received food in addition to payment. The phrase "services of a non-military character" might be misunderstood in the text before the Committee. Conscientious objectors sometimes did work such as hospital work. Such services were considered military in France. It would be preferable to use the word "services" without any qualification.

/it was agreed

It was agreed without objection that the representative of Lebanon should submit his proposal in writing to the following meeting of the Committee, taking into account the comments which had been made.

Article 8, paragraph 3 (b)

Mr. ORDONNEAU (France) thought that the enumeration contained in that clause was unnecessary and restrictive. It would be better to use a simple phrase, "emergency or danger threatening the life of the community".

Mr. Malik (Lebanon) proposed that the words "or other emergencies" should be omitted.

The CHAIRMAN said that the United States delegation preferred the wording proposed by the French representative.

Mr. WILSON (United Kingdom) said that the clause had been taken from Article 2(d) of the International Labour Organization Convention on Forced Labour of 1930. Where possible, it was better to retain the wording of conventions which had already been ratified and in force for some time.

The CHAIRMAN said that it was not the exact wording of the International Labour Organization Convention clause, and the Committee was not necessarily bound to follow the wording of existing conventions.

Mr. ORDONNEAU (France) said that it would have been better to retain the wording of the International Labour Organization clause if the formula had been exactly the same. As this was not the case, he did not think it was necessary. The Committee was drafting a general Covenant on Human Rights and need not be bound by existing conventions.

The CHAIRMAN said that the United States delegation objected to the Article in general. If it were retained, they would wish to keep the phrase "or other emergencies".

Mr. WU (China) said that he favoured one overall limitation clause and would abstain from voting on this paragraph.

The CHAIRMAN put to the vote the paragraph 3(b) as drafted by the Commission on Human Rights.

Paragraph 3(b) was adopted by two votes to none with five abstentions.

Article 8, paragraph 3(c)

At the suggestion of the United Kingdom representative it was agreed to postpone consideration of this paragraph until the suggestions made by the International Labour Organization had been circulated.

Mr. HEYWOOD (Australia) asked whether the Article on forced labour was intended to include direction of labour for manpower purposes.

The CHAIRMAN thought direction of labour would be considered as coming under forced labour unless an overall limitation clause were adopted.

/Mr. WILSON (United Kingdom)

Mr. WILSON (United Kingdom) took the view that direction of labour was excluded from the Article on forced labour. Circumstances in time of war or public emergency might make necessary the direction of labour: this situation would then be covered by Article 4 of the Covenant.

The CHAIRMAN said that the matter would also need to be considered under the Article dealing with freedom of movement and choice of residence.

It was agreed that the new paragraph 3(d) proposed by the Government of Brazil (E/CN.4/85, page 63) was too vague, possibly dangerous and should be omitted.

#### DISCUSSION OF ARTICLE 11 OF THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS.

The CHAIRMAN read the comments on Article 11 received by the Governments of the Netherlands, the Union of South Africa (E/CN.4/85, pages 70-71) and India (E/CN.4/82/Add.7), not represented on the Drafting Committee.

Mr. SANTA CRUZ (Chile) said this Article was an extremely important one. Any restriction on freedom of movement should be applied only in exceptional circumstances. The comments of the Indian Government were worthy of consideration, and he supported the amendment proposed.

Mr. WU (China) said that the phrase "adopted for specific reasons of security or in the general interest" was open to a wide interpretation, and he preferred the text proposed by the United Kingdom delegation (E/CN.4/AC.1/19, page 13).

Mr. WILSON (United Kingdom) said that he interpreted the clause as relating to the prevention of discrimination. If it was intended to go beyond that, a number of difficulties would arise. The present wording needed clarification. It went too far and it conflicted with the rights of property. He drew attention to the comments of the United Kingdom Government (cf. E/CN.4/85, page 70). The Indian suggestion, to some extent, met his point, but the Article should deal mainly with discrimination and should be redrafted along those lines.

The CHAIRMAN, speaking as the United States representative said that freedom of movement and residence was an important right, and was not only a question of discrimination. She read the United States proposal for this Article (E/CN.4/AC.1/19, page 13). Freedom of movement meant that no individual or government should have the right to prevent free movement of any person. Freedom of residence meant that no state could restrict free choice of residence on an arbitrary basis. The Article should be as simple possible.

Mr. WILSON (United Kingdom) said that because of the great number of citations to this provision, he doubted whether it should appear in the Covenant in anything like its present form. Freedom of movement, while highly desirable, was not in the same category as the right to life. It would rather be included in the Declaration. If it appeared in the Covenant,

/then it should



then it should be restricted to the discrimination aspect. The comments of the South African Government were important.

Mr. SANTA CRUZ (Chile) said that discrimination was very important in this context, but it was not the only aspect of the matter. In Chile there was freedom of movement and residence subject only to the demands of national security. He supported the Indian suggestion.

Mr. MALIK (Lebanon) said that there were three points of view: one, that freedom of movement and choice of residence were outside the domain of human rights; two, that they were within the field of human rights but were hedged about by limitations; three, that they were absolute, unlimited human rights. The two extremes were untrue. Freedom of movement was a fundamental human right, and a formula must be worked out taking account of all reasonable limitations but stating clearly and unambiguously what was meant. He favoured the United States text, without committing himself on the subject of a general overall limitation clause. Some statement, with or without limitations was important. If the limitations were included in the Article, he would support the Indian suggestion. Citizens should enjoy all the rights of citizenship and there could be no discrimination within the borders of a State with regard to freedom of movement and choice of residence. The only emergencies under which this freedom might be restricted were war and epidemic. Any other limitation meant discrimination and this was contrary to the principles of the United Nations Charter.

Mr. SANTA CRUZ (Chile) supported the representative of the Lebanon. He would accept the United States draft with the understanding that a general limitation clause would be drafted later. If not, he would support the Indian suggestion.

Mr. WILSON (United Kingdom) said that the limitations should appear in the Article dealing with freedom of movement and residence, even if there were a general overall limitation clause.

The CHAIRMAN said that a vote would be taken on the United States text with the understanding that a further decision would be taken later on whether there was to be a general overall limitation clause, or whether the limitations on freedom of movement and choice of residence should be included specifically in Article 11.

The Committee adopted by five votes to one with one abstention the United States text of Article 11 (cf. E/CN.4/AC.19, page 13).